

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PHILLIP SEYMOUR,

Appellant,

v.

COUNTY ROAD ADMINISTRATION
BOARD,

Respondent.

Case No. SUSP-99-0023

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 Hearing. This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair, and LEANA D. LAMB, Member. The hearing was held on March 16, 2000, in the Personnel Appeals Board hearing room in Olympia, Washington. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 Appearances. Appellant Philip Seymour was present and was represented by Larry Goodman of Larry Goodman and Associates LLC. Respondent County Road Administration Board was represented by David Slown, Assistant Attorney General.

1.3 Nature of Appeal. This is an appeal from the disciplinary sanction of a five-day suspension for insubordination. Respondent alleges that Appellant sent a discourteous and disrespectful e-mail to the Executive Director of the agency.

1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995).

II. FINDINGS OF FACT

2.1 Appellant Phillip Seymour is a Financial Manager and permanent employee of Respondent County Road Administration Board (CRAB). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal on August 27, 1999.

2.2 By letter dated August 5, 1999, Jay Weber, Executive Director, informed Appellant of his five-day suspension without pay. Mr. Weber alleged that Appellant was insubordinate when Appellant sent him a July 16, 1999, e-mail that was discourteous and disrespectful.

2.3 Prior to the incident giving rise to this appeal, Appellant had received two letters of reprimand, both dated May 22, 1999. The first letter informed Appellant that obscene language and displays of emotional outbursts toward fellow employees would not be tolerated and that his demeanor was to be one which bespoke the courtesy and respect that each of his fellow employees deserved. The second letter formalized discussions between Appellant and Mr. Weber regarding the appropriate use of e-mail and instructed Appellant that use of e-mail containing obscene and abusive language was an example of activity that would not be tolerated. In addition, Mr. Weber met with Appellant at least twice to discuss Appellant's inappropriate communication style and advised Appellant that he needed to find better ways to express himself.

2.4 Furthermore, Appellant's performance evaluations addressed his inappropriate style of communication. His evaluation for the period ending February 16, 1994 included the comments that he was "sometimes abrasive," that he "could improve that characteristic," and that his "language [was] sometimes raw and should be improved." His evaluation for the period ending March 1995 included the comments "[n]oticeable improvement in abrasiveness and appropriate behavior over the last (sic) evaluation period" and instructed Appellant that in the future, he should "[t]hink before opening his mouth."

1 2.5 On July 16, 1999, Appellant sent Mr. Weber an e-mail that criticized the “incredulous”
2 salary increase given to the agency’s “Technonerds” and stated, in part, that this “just really fries
3 my bacon, especially when I had to fight tooth and nail for what was promised and owed me.”
4 Regarding the promotion of the Manager of Information Services to the position of Assistant
5 Director, Appellant’s e-mail stated, “[a]nd the fact that you promoted a person who has to be the
6 absolutely worst manager I’ve ever seen and far and away the Agency’s greatest slacker to
7 Assistant Director just boggles my mind.” Appellant also criticized the time and energy the
8 agency’s computer employees devoted to their jobs and stated that this really “irks” him. Appellant
9 closed his e-mail by stating that while he was out of the office during his military leave, he would
10 not be checking on his work at CRAB except for the payroll. Appellant also informed Mr. Weber
11 that he could have his “high paid techies do the budget” for him.

12 2.6 On July 20, 1999, Appellant sent Mr. Weber an e-mail referencing the July 16 e-mail.
13 Appellant apologized for his poor judgment in using the e-mail to vent.
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15 2.7 On July 21, 1999, Appellant sent Mr. Weber a third e-mail regarding Mr. Weber’s lack of
16 response to his previous two e-mails.
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18 2.8 Prior to noon on August 4, 1999, Mr. Weber provided Appellant with notice of a pre-
19 disciplinary conference. The conference was scheduled for 3:00 p.m. on August 4. Mr. Weber
20 informed Appellant that the content of the July 16 e-mail was clearly insubordinate and
21 representative of gross misconduct. Mr. Weber also informed Appellant that disciplinary action
22 was being considered and that “[t]his action may include reprimand, leave without pay, and
23 reduction of salary and grade.”

24 2.9 Appellant did not request additional time to prepare a response to the charges, and he
25 attended the pre-disciplinary conference.
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2 2.10 By letter dated August 5, 1999, Mr. Weber informed Appellant of his suspension without
3 pay for the period of August 9, 1999 through August 13, 1999. The August 5 letter did not provide
4 Appellant with notice of his right to appeal the action, however, on August 27, 1999, Appellant
5 filed a timely appeal with the Board.

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7 2.11 Jay Weber is Appellant's appointing authority. Mr. Weber determined that Appellant's e-
8 mail challenged his authority, called into question his choice for the assistant director position, was
9 disrespectful to the newly appointed assistant director, implied that Appellant would not perform
10 his work, and violated his directive to Appellant to treat others with respect and decorum.
11 Therefore, Mr. Weber determined that the content of Appellant's e-mail constituted
12 insubordination. Because Appellant had received previous verbal and written directives about his
13 inappropriate communication style, Mr. Weber determined that a five-day suspension was the
14 appropriate level of discipline.

15 **III. ARGUMENTS OF THE PARTIES**

16 3.1 Respondent argues that the language of Appellant's e-mail was disrespectful, created the
17 impression that he was not going to do his job as he had in the past, and clearly constituted
18 insubordination. Respondent contends Appellant willfully wrote and sent the e-mail, which could
19 have been made public by way of a public disclosure request, even though he knew this was not an
20 appropriate use of e-mail. Respondent argues that Appellant had prior incidents of similar
21 behavior, had received counseling and a letter of reprimand for his inappropriate communication
22 style, and that a five-day suspension without pay was an appropriate level of discipline.

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24 3.2 Appellant argues that his behavior did not constitute insubordination because he was not
25 willfully disrespectful or disobedient, he did not refuse to comply with a lawful order and he did not
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1 refuse to submit to authority. Appellant concedes that he said a number of things in the heat of the
2 moment, and he recognizes that once in a while his style and tone of communication is abrasive.
3 However, he argues that his communication tone and style is his manner of free speech and his
4 constitutional right of free expression. In addition, Appellant argues that the pre-disciplinary
5 process was flawed because he was not given ample opportunity to prepare for the meeting and was
6 not provided notice of his right to have a representative present at the meeting. Appellant further
7 argues that the disciplinary letter was flawed because he was not given notice of his appeal rights.

8 9 **IV. CONCLUSIONS OF LAW**

10 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
11 herein.

12 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
13 the charges upon which the action was initiated by proving by a preponderance of the credible
14 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
15 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
16 Corrections, PAB No. D82-084 (1983).

17 4.3 Insubordination is the refusal to comply with a lawful order or directive given by a superior
18 and is defined as not submitting to authority, willful disrespect or disobedience. Countryman v.
19 Dep't of Social and Health Services, PAB No. D94-025 (1995).

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21 4.4 Respondent has proven that Appellant willfully composed and sent the July 16 e-mail and
22 that the tone and language of his e-mail was disrespectful and discourteous. Appellant had been put
23 on notice that such behavior could result in discipline and as evidenced by his July 20 e-mail of
24 apology, he recognized that his July 16 e-mail had overstepped the boundaries of acceptable
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1 behavior. Respondent has met its burden of proving that Appellant's actions constituted
2 insubordination.

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4 4.5 Appellant has successfully argued that the disciplinary letter constituted a technical
5 violation of the rule requiring that employees be given notice of their appeal rights. However,
6 Appellant filed a timely appeal of his suspension and was not harmed. Under that facts and
7 circumstances of this case, a technical violation of the rule does not warrant revocation of the
8 disciplinary action. Furthermore, Appellant has failed to show that he was harmed by the pre-
9 disciplinary process.

10 4.6 Respondent has proven the charges in the disciplinary letter and has proven that a five-day
11 suspension is the appropriate disciplinary sanction. Therefore, the appeal should be denied.

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13 **V. ORDER**

14 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Phillip Seymour is denied.

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16 DATED this _____ day of _____, 2000.

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18 WASHINGTON STATE PERSONNEL APPEALS BOARD

19
20 _____
Gerald L. Morgen, Vice Chair

21
22 _____
Leana D. Lamb, Member

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24
25
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Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504
(360) 586-1481